

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the
Family Child Care License of Linda
Moore.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 5, 2007, at Room 42, 15 W. Kellogg Boulevard, St. Paul, MN 55102. The record closed on September 13, 2007, upon receipt of post-hearing memoranda.

David MacMillan, Assistant Ramsey County Attorney, 50 W. Kellogg Boulevard, Suite 560, St. Paul, MN 55103, appeared on behalf of the Department of Human Services (Department) and Ramsey County Human Services (County).

Lindsay W. Shaw, Esq., Southern Minnesota Regional Legal Services, Inc., Suite 200, 166 East Fourth Street, St. Paul, MN 55101, appeared for Linda Moore (Applicant).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61 (2006), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2006). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Is the Applicant disqualified from being a licensed provider of family child care pursuant to Minn. Stat. § 245C.15, subd. 2 (2006) because her parental rights to one of her daughters were terminated in 1999?

2. Did the Department properly deny the license application pursuant to Minn. Stat. § 245A.05 (2006) because the Applicant knowingly withheld relevant information from the Commissioner?

The Administrative Law Judge concludes that the Applicant is not disqualified and that the Applicant did not knowingly withhold relevant information.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Linda Moore is a 49-year-old resident of St. Paul. She moved to Minnesota in 1984, when she and her three children came to stay in a battered women's shelter. Michael Lewis, her husband at the time, was a physically abusive drug addict who used alcohol, heroin, and crack cocaine. She came to Minnesota because he had threatened to kill her with a butcher knife. Mr. Lewis followed the family to Minnesota and lived on and off with them from 1986 through the early 1990s.^[1]

2. One of Linda Moore's daughters, T.L., developed significant emotional and behavioral problems. She blamed her mother for her father's absence from home. From the age of nine, T.L. engaged in assaultive behavior toward her mother, siblings, and others, which persisted despite years of attempts to address it through counseling. The anger and hostility toward her mother increased when Linda Moore met her current husband, Ronald Moore, and initiated divorce proceedings against Michael Lewis. From August 1996 forward, T.L. spent most of her time in out-of-home placements and juvenile correctional facilities (including the Chamberlain Academy in South Dakota, Mesaba Academy, and Austin Ranch) for engaging in assaultive behavior and making terroristic threats.^[2]

3. Linda Moore married Ronald Moore in October 1998, after her divorce became final.^[3] At the time, Michael Lewis was either in jail or prison.^[4]

4. In late October 1998 T.L., at age 15, was suspended from school for ten days for punching another student in the face. On November 3, 1998, T.L. became enraged with her mother and physically attacked Ms. Moore. When Ronald Moore tried to restrain her, she bit him, grabbed a piece of pipe holding up the kitchen sink, and threatened to hit him. The police were called and took T.L. to a shelter home. There, she was verbally abusive and uncooperative with the shelter parents, who requested that she be moved. Linda Moore refused to allow T.L. to return home. In

the view of the child protection social worker assigned to the matter, T.L. had “unbelievable rage,” and Linda and Ronald Moore honestly believed T.L. would try to kill them if she returned home.^[5]

5. Ms. Moore wanted T.L. to participate in family therapy and to remain out of the home for about six months.^[6] In mid-December 1998, the social worker informed Ms. Moore that T.L. could not remain in a shelter placement for six months and that the County would have to bring a petition alleging neglect based on Moore’s refusal to allow T.L. to return home.^[7] T.L. herself was unwilling to return home, unwilling to stay with her grandmother in Detroit, and unwilling to participate in an anger management program or family counseling with her mother.^[8]

6. On January 11, 1999, the County filed a petition to find T.L. a child in need of protection or services (CHIPS Petition), on the basis that Linda Moore was unable or unwilling to provide a home for T.L.. An attachment to the CHIPS Petition references a December 3, 1998, finding of maltreatment by neglect against Ms. Moore because she would not provide a home for her daughter or assume financial responsibility for the cost of placement.^[9] There is no evidence that the County provided written notice to Ms. Moore of the maltreatment determination or any information about how to appeal such a determination.

7. On July 9, 1999, Ms. Moore filed a petition to voluntarily terminate her parental rights.^[10] Ms. Moore was represented by counsel; T.L. had a personal attorney and a guardian ad litem. The parental rights petition was consolidated with the CHIPS proceeding.^[11]

8. On July 21, 1999, the Ramsey County District Court, Juvenile Court Division, issued an order finding by clear and convincing evidence that Linda Moore agreed to terminate her parental rights as being in the best interests of the child and concluding that there was good cause to terminate Linda Moore’s parental rights to T.L. within the meaning of Minn. Stat. § 260.221, subd. 1(a) (1998).^[12]

9. Minn. Stat. § 260.221, subd. 1(a), was repealed and recodified as Minn. Stat. § 260C.301, subd. 1(a) (1998 & Supp. 1999).^[13]

10. The termination of parental rights for good cause under Minn. Stat. § 260C.301, subd. 1(a), is not a disqualification for any period of time under the Background Studies Act, Minn. Stat. § 245C.15. In contrast, the termination of parental rights under Minn. Stat. § 260C.301, subd. 1(b), on the basis of a finding of neglect or abandonment, is a 15-year disqualification.^[14]

11. The termination of parental rights concluded the CHIPS proceeding with regard to Ms. Moore. No findings of neglect or abandonment were made against Linda Moore in connection with the CHIPS proceeding.

12. Michael Lewis died in custody on August 26, 1999.^[15]

13. T.L. was placed in a foster home in Mankato, where she stayed until age 18. Despite the legal termination of parental rights, Linda Moore and T.L. maintained contact with each other during this placement, and they now have a close relationship. When T.L. became pregnant at age 19, she moved in with her mother and lived there until her baby was born in 2002. T.L. now lives in an apartment near her mother's home. She is employed as a nursing assistant, and Linda Moore cares for T.L.'s daughter when T.L. is at work or school.^[16]

14. In June 2005, Linda Moore became a licensed provider of child foster care. The license was issued through REM, a private child foster care licensing agency.^[17]

15. On October 11, 2005, Ms. Moore applied for a family child care license. On the application form, she disclosed that she held a current license to provide child foster care.^[18] She identified the members of her household as Ronald Moore, her husband; and her 19-year-old daughter Felicia Lewis. On a fact sheet submitted with the application, Ms. Moore answered "yes" to the question "Have you or anyone in your household ever had contact with Child Protection, Adult Protection, Welfare, or other social services? Moore wrote that she had received assistance in 1998. In response to the question "Have you or anyone in the household been involved with Child or Adult Probation?" Moore answered "No."^[19]

16. Ramsey County has a policy that providers may not hold dual licensure for child foster care and family child care unless they have one full year of licensing experience under the first license obtained. A licensing social worker reviewed Ms. Moore's application and then contacted her to inform her that the County would not proceed with processing the application for a family child care license. The licensing worker told Ms. Moore that she could reapply if she closed out her child foster care license, or she could wait and reapply after holding her child foster care license for one year.^[20]

17. On November 18, 2005, Ms. Moore reapplied for a family child care license, after closing out her child foster care license. She again identified Ronald Moore and Felicia Lewis as the other members of her household.^[21] The licensing social worker waited for verification that the foster care license had been closed, and then she began processing Moore's application. The first step was to request background studies.^[22]

18. During the course of the background study, a check of internal social services records disclosed the CHIPS Petition and the reference to the 1998 finding of maltreatment by neglect for Moore's refusal to permit T.L. to return home. The licensing worker then located the records pertaining to the termination of Moore's parental rights.^[23]

19. In December 2005, the licensing worker had a telephone conversation with Linda Moore about the content of the social services records. Linda Moore appeared to be confused and unaware that there were any child protection records

involving allegations of neglect made against her. The licensing worker told Moore it would take more time to complete the background study process.^[24] The licensing worker believed, and communicated to Ms. Moore, that Ms. Moore was not sufficiently forthcoming in answering the questions on the fact sheet because she failed to provide specific information about her involvement as a parent in the termination of parental rights proceeding. She told Ms. Moore that she should read and answer the questions on the fact sheet as broadly as possible.^[25]

20. On April 12, 2006, Linda Moore provided the County with an updated fact sheet. In response to the question whether she or anyone in her household had any contact with child protection, adult protection, welfare, or other social services, she answered "Yes" and wrote St. Joseph Home for Children, African American Family Services, and Face to Face; and she referred to an attached letter.^[26] In the attached letter, Moore stated she had passed background studies to work as a nursing assistant and had no disqualifications that would prevent her from working in this field. With regard to her daughter, she said:

I have had contact with child protection around 1997 I think. That was many years ago and I do not remember exact dates. African American Family Services, St. Joseph's Home for Children's Outreach, and FACE to FACE have been involved with the family. Went to court in 1998 and voluntarily terminated my parental rights, because she made it clear she did not want to stay in our home. This was a very hard and painful time for me as well as for my daughter to be separated in such a horrible way. I never said my daughter could not live at home just that her violent outburst, throwing glass, computers, breaking windows, physically and verbally abusing with biting, cursing (nasty profanity). From 12-18 [T.L.] was in and out of our home. During the time [T.L.] was out of the home we talked a lot on the phone. When she became legally an adult [T.L.] moved back to St. Paul and stayed with me for a while until she found a place of her own and had my granddaughter in May of 2002. We have a second chance to build a good relationship with each other. Thank GOD.^[27]

21. On or about April 25, 2006, the licensing worker forwarded information from the background studies to the county attorney's office.^[28] In May 2006 the licensing social worker received a letter opinion from the county attorney's office indicating that Moore was disqualified for 15 years on the basis of the voluntary termination of parental rights in July 1999.^[29]

22. On May 17, 2006, the County notified Ms. Moore that she was disqualified "due to an adjudication, under Minnesota Statutes 260C.301, **subd. 1(b)** (Voluntary Termination of Parental Rights), which occurred on/about 7-21-99."^[30]

23. On June 6, 2006, the Applicant requested reconsideration.^[31] She again explained the circumstances that led to the termination of parental rights. She also attached a reference letter from the program supervisor at REM Children and Family

Services, stating that the Moores had served as foster parents for four children who had suffered from abuse and neglect; that the agency was sorry to lose them as foster care providers when they gave up their license so Ms. Moore could pursue a child care license; that the Moores were conscientious, caring foster parents who adhered to all the rules and regulations involved in foster care; and that they were foster parents in good standing throughout their tenure with the agency.^[32]

24. On July 28, 2006, Ramsey County recommended that the Department deny the license application on the basis that the Applicant was disqualified “due to an adjudication, under Minnesota Statutes, section 260C.301, **subd. 1(b)** (Voluntary Termination of Parental Rights), which occurred on/about 7-21-99.”^[33] In addition, the County recommended denial based on factual errors made by the Applicant in the licensing paperwork.^[34]

25. Almost one year later, on June 12, 2007, the Department notified the Applicant that the disqualification would not be set aside and issued an Order denying the application for a family child care license.^[35] The Department denied the application on the basis that Ms. Moore is disqualified, but did not specify which statute provided the basis for such a conclusion. In addition, the Department denied the application on the basis that Moore failed to disclose information about the voluntary termination of parental rights and a December 1998 Ramsey County maltreatment finding. In addition, the Department based the denial on Moore’s denial of any involvement with child protection services or other social services, when information obtained during the licensing process “indicated [Moore] and/or [her] family received child protection services from 1998 to 1999 and from juvenile probation from 1996 to 2001.”^[36]

26. Ms. Moore has long been active in church and community organizations. She has directed the Household of Faith soup kitchen at the Salvation Army and led Bible study groups. The pastor of Household of Faith submitted a reference indicating Ms. Moore is a person of good character and integrity.^[37] Minister Joseph Strickland submitted a reference attesting to her work for St. Paul Food Pantries, strong community service skills, honesty, and work ethic.^[38] A friend who has known her for ten years through various church activities submitted a character reference as to her trustworthiness and high ethical standards.^[39]

27. On June 27, 2007, the Commissioner issued a Notice and Order for Hearing scheduling the hearing to take place on September 5, 2007.

28. The hearing took place as scheduled on September 5, 2007.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08. This is

a consolidated hearing concerning the disqualification and order of revocation pursuant to Minn. Stat. § 245A.08, subd. 2a (2006).

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. The Department bears the burden of proof to show that the Licensee is disqualified by a preponderance of the evidence.^[40]

5. The Applicant's parental rights to T.L. were terminated for good cause pursuant to of Minn. Stat. § 260.221, subd. 1(a) (1998). That statutory provision was repealed and recodified as Minn. Stat. § 260C.301, subd. 1(a) (1998 & Supp. 1999).^[41]

6. Voluntary termination of parental rights for good cause pursuant to Minn. Stat. § 260C.301, subd. 1(a) (2006), is not a statutory disqualification for a child care license.^[42]

7. The Applicant is not disqualified from receiving a family child care license on the basis of the termination of her parental rights.

8. The Commissioner may deny an application for a child care license if the Applicant knowingly withholds relevant information from the Commissioner in connection with the license application.^[43]

9. The Applicant did not knowingly withhold relevant information from the Commissioner.

10. The conclusions are reached for the reasons set forth in the attached Memorandum, which is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner reverse the denial of the Applicant's application for a family child care license.

Dated: October 11, 2007

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The sole argument advanced by the Department is that Ms. Moore is disqualified for 15 years pursuant to Minn. Stat. § 260C.301, subd. 1(b), because, in the Department's view, she abandoned or neglected T.L.. It is true that termination of parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b), based on a finding of abandonment, neglect, failure to contribute to the support of a child, palpable unfitness of the parent, or the failure of reasonable efforts to correct the conditions leading to the child's out-of-home placement, is a 15-year disqualification; however, that is not the basis upon which Ms. Moore's parental rights were terminated. The juvenile court terminated her parental rights for good cause pursuant to Minn. Stat. § 260.221, subd. 1(a), a provision recodified as § 260C.301, subd. 1(a). The termination of parental rights for good cause under this provision is not a statutory disqualification for any period of time. The correspondence from the County to the Department indicating Ms. Moore was disqualified "due to an adjudication, under Minnesota Statutes 260C.301, subd. 1(b)" is incorrect.^[44]

Although an additional basis for the order denying licensure to Ms. Moore was that she withheld relevant information, the Department does not make this argument in its post-hearing brief. After careful examination of the record, the Administrative Law Judge has concluded that the evidence does not support the conclusion that Ms. Moore knowingly withheld any information. On the initial fact sheet submitted with her application, Ms. Moore answered "yes" to the question "Have you or anyone in your household ever had contact with Child Protection, Adult Protection, Welfare, or other social services?" Moore wrote that she had received assistance in 1998. In response to the question "Have you or anyone in the household been involved with Child or Adult Probation?" Moore answered "No."

Ms. Moore testified credibly that when she submitted the initial fact sheet, she had no awareness of the distinctions between the services provided to her family in 1998 from child protection, social services, and juvenile probation. Although she had been involved in numerous juvenile court proceedings as the parent of T.L., T.L. was not a member of her household in 2005, and she did not understand the form to ask for or require information about family members who did not live in the household. She was not aware that the process leading to termination of her parental rights was initiated by child protection workers, and because her parental rights were ultimately terminated for good cause, she did not believe that she had ever been accused of or found responsible for maltreatment or neglect. When the licensing social worker advised Ms. Moore to resubmit the form to address the termination of parental rights, she complied with the request. Furthermore, Ms. Moore had passed background studies in previous years to work as a nursing assistant and a licensed provider of child

foster care. There appears to be little reason for her to have concealed the termination of parental rights.

In addition, there is no evidence that the County ever provided written notice to her of the 1998 maltreatment determination. Ms. Moore testified she had no knowledge of such a determination. The only reference in the record to any notice given her is in the child protection social worker's case notes, in which he said he gave verbal notice to Moore that her continued refusal to permit T.L. to return home would constitute neglect. On this record, the ALJ cannot conclude that Moore knowingly failed to disclose the maltreatment determination made by the County in 1998. In any event, a determination of maltreatment by neglect made in December 1998 would not disqualify Ms. Moore from licensure, as it is more than seven years old.^[45]

Finally, the Administrative Law Judge notes that Ms. Moore provided compelling testimony that the termination of parental rights was a personally devastating decision made only as a last resort after tolerating many years of physical abuse by T.L. and T.L.'s father. T.L.'s testimony in support of her mother was equally compelling. It is unclear why the licensing social worker formed the opinion that Ms. Moore willingly wrote off a troublesome child in order to make her new husband happy. There is certainly nothing in this record that would provide the factual basis for such a viewpoint.

K.D.S.

^[1] Testimony of Linda Moore.

^[2] Test. of L. Moore; Testimony of Tawanda Boadi; DHS Ex. 10; DHS Ex. 17 at 3.

^[3] Test. of L. Moore.

^[4] DHS Ex. 17 at 4.

^[5] DHS Ex. 17 at 5.

^[6] Test. of L. Moore.

^[7] DHS Ex. 17 at 10.

^[8] DHS Ex. 17; Test. of T. Boadi.

^[9] DHS Ex. 10 at 2.

^[10] DHS Ex. 8.

^[11] DHS Ex. 10 (CHIPS Court File No. J3-99-550298); DHS Ex. 8 (CHIPS Court File No. J3-99-550298 and TPR Court File No. J0-94-552610).

^[12] DHS Ex. 8.

^[13] See 1999 Minn. Laws ch. 139, art. 3, § 29.

^[14] Minn. Stat. § 245C.15, subd. 3(c).

^[15] DHS Ex. 9.

^[16] Test. of L. Moore; Test. of T. Boadi.

^[17] Testimony of Renay Stringer; Applicant's Ex. 1.

^[18] DHS Ex. 11.

^[19] DHS Ex. 21.

^[20] Test. of R. Stringer.

^[21] DHS Ex. 12.

^[22] Test. of R. Stringer.

- [\[23\]](#) *Id.*
- [\[24\]](#) *Id.*
- [\[25\]](#) *Id.*
- [\[26\]](#) DHS Ex. 13.
- [\[27\]](#) DHS Ex. 14.
- [\[28\]](#) DHS Ex. 15.
- [\[29\]](#) This document was not offered or received in evidence at the hearing.
- [\[30\]](#) DHS Ex. 4 at 1 (emphasis added).
- [\[31\]](#) DHS Exs. 6-7; Applicant's Exs. 4-5.
- [\[32\]](#) Ex. 7.
- [\[33\]](#) DHS Ex. 3 at 2 (emphasis added).
- [\[34\]](#) *Id.* at 2-3.
- [\[35\]](#) DHS Ex. 1.
- [\[36\]](#) Ex. 1.
- [\[37\]](#) Applicant's Ex. 14.
- [\[38\]](#) Applicant's Ex. 15.
- [\[39\]](#) Applicant's Ex. 16.
- [\[40\]](#) Minn. Stat. § 245C.14, subd. 1(2).
- [\[41\]](#) 1999 Minn. Laws ch. 139, art. 3, § 29.
- [\[42\]](#) See Minn. Stat. § 245C.15, subd. 2(c).
- [\[43\]](#) Minn. Stat. § 245A.05 (2006).
- [\[44\]](#) DHS Exs. 3 & 4.
- [\[45\]](#) See Minn. Stat. § 245C.15, subd. 4(b).